

SENATE BILL 1988
By Kurita

AN ACT to authorize Cheatham County to levy and collect a privilege tax on new industrial development in the county in order to provide that new industrial development contribute its fair share of the cost of providing public facilities and services made necessary by such new industrial development.

WHEREAS, Cheatham County, Tennessee, has been one of the fastest growing counties in the state for the past fifteen (15) years, having been impacted by the rapid growth in the standard metropolitan area of Nashville; and

WHEREAS, anticipated continued growth from the expansion of Nashville is expected to accelerate due to the continuing location of manufacturing and commercial business in the Middle Tennessee area, and from other factors; and

WHEREAS, current projections show that:

(1) County population will be 42,000 persons in year 2010, an increase of 55% from 1990 to 2010; there will be a demand for approximately 5,000 additional dwelling units between 1990 and 2010; and new development will consume an additional 5,000 acres of land in Cheatham County;

(2) Projected growth and land use development will cause a demand for county-provided capital facilities (schools, roads, jails, parks, county governmental facilities, etc.) in an amount well in excess of \$40 million over the next fifteen (15) years;

(3) The county's present revenue-raising authority is limited and relies heavily on intergovernmental transfers which are not subject to county control and on property

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taxes, which would impose the costs of new growth on existing residents rather than on new residents and businesses who create the demand for the additional expenditures; and

WHEREAS, Cheatham County is committed to both present and future county residents to maintaining a level of public facilities and services commensurate with those presently provided; and

WHEREAS, Cheatham County is prepared to impose a fair, equitable and reasonable share of the costs of providing the necessary public facilities and services on existing residents of the county; and

WHEREAS, the county's present population employment base, tax base and budget alone cannot support the additional revenues needed to supply facilities to serve new growth without a substantial increase in the property tax rate on existing development; and

WHEREAS, due to these unique circumstances, it is necessary and appropriate that Cheatham County be given authorization to extend its taxing power to enable the county to impose a fair and reasonable share of the costs of public facilities necessitated by new industrial development on such development so as not to create an unfair and inequitable burden on existing county residents; and

WHEREAS, there is precedent in the State of Tennessee for such additional tax measures to impose costs on those who benefit from improvements and where the result otherwise would be to impose an unfair burden on existing residents; and

WHEREAS, the most logical and effective mechanism to accomplish the intended result would be the imposition of a new privilege tax on new industrial development in Cheatham County, now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This Act shall be known and cited as the Cheatham County Adequate Facilities Tax.

SECTION 2. As used in this Act, unless a different meaning appears from the context:

(1) "Board of Adjustments and Appeals" means the board established in Cheatham County pursuant to the requirements of the Southern Standard Building Code Congress.

(2) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home, but excludes those buildings specified in Section 6 below.

(3) "Building Permit" means a permit for development issued in Cheatham County, whether by the county or by any city therein.

(4) "Capital Improvement Program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expense, for the purchase, construction, or replacement of the physical assets of the community are included.

(5) "Certificate of Occupancy" means a license for occupancy of a building or structure issued in Cheatham County, whether by the county or by any city therein.

(6) "Commercial" means all property of every kind used, directly or indirectly, or held for use, for any commercial, trade, professional, club (whether public or private), nonexempt lodge, business, or similar purpose, whether conducted for profit or not.

(7) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which provides, adds to or increases the floor area of an industrial use.

(8) "Dwelling Unit" means a room or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly or longer basis; physically separated from any other room(s) or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(9) "Floor Area" for industrial development means the total of the gross horizontal area of all floors, including usable basements and cellars, below the roof and within the outer surface

of the main walls or principal or accessory buildings or the center lines of party walls separating such building or portions thereof, or within lines drawn parallel to and two (2) feet within the roof line of any building or portions thereof without walls, but excluding arcades, porticoes and similar open areas which are accessible to the general public, and which are not designed or used as sales, display, storage, services or production areas.

(10) "General Plan" means the official statement of the planning commission which sets forth major policies concerning future development of the jurisdictional area and meeting the provisions set forth in Tennessee Code Annotated, Sections 13-3-101, 13-3-102 and 13-4-302. For the purposes of this act only, a general plan may consist solely of the land development plan element which sets out a plan or scheme of future land usage.

(11) "Governing Body" means county legislative body of Cheatham County, Tennessee.

(12) "Industrial" means the development of any property for any use other than residential or commercial use, except as may be exempted by this act.

(13) "Major Street or Road Plan" means the plan adopted by the planning commission, pursuant to Tennessee Code Annotated, Section 13-3-402 and 13-4-302, showing among other things, "the general location, character, and extent of public ways [and] the removal, relocation, extension, widening, narrowing, vacating, abandonment or change of use of existing public ways."

(14) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate or other group or combination acting as a unit.

(15) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, a place of worship does not include buildings or portions of buildings which are used for the purposes other than for worship and related functions or which are or are intended to be leased, rented or used by persons who do not have tax-exempt status.

(16) "Public Buildings" means a building owned by the state of Tennessee or any agency thereof, a political subdivision of the state of Tennessee, including, but necessarily limited to, counties, cities, school districts and special districts, or the federal government or any agency thereof.

(17) "Public Facility or Facilities" means a physical improvement undertaken by the county or city, including, but not limited to, the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities and other governmental capital improvements benefiting the citizens of the county and/or city.

(18) "Residential" means the development of any property for a dwelling unit or units.

(19) "Subdivision Regulations" means the regulations adopted by the Cheatham County regional planning commission pursuant to state statutory authorization on August 22, 1991, as amended, by which the county regulates the subdivision of land.

(20) "Zoning Resolution" means the resolution adopted by the governing body pursuant to state statutory authorization on January 21, 1991, as amended, by which the county regulates the zoning, use, and development of property.

SECTION 3. It is the intent and purpose of this act to authorize Cheatham County to impose a tax on new industrial development in the county payable at the time of issuance of a building permit or certificate of occupancy so as to ensure and require that the persons responsible for new industrial development share in the burdens of growth by paying their fair share for the cost of new and expanded facilities made necessary by such development.

SECTION 4. Engaging in the act of industrial development within Cheatham County, except as provided in Section 6 herein, is declared to be a privilege upon which Cheatham County may, by resolution of the governing body, levy a tax in an amount not to exceed the rate set forth in Section 7.

SECTION 5. The governing body shall impose the tax authorized herein by resolution after adopting a capital improvements program indicating the need for the cost of public facilities anticipated to be funded, in part, by this tax and after finding that the need for such public facilities is reasonably related to new development in the county. The resolution of the governing body imposing this tax shall state the rate of the tax on new industrial development. The governing body shall, by resolution, adopt administrative guidelines, procedures, regulations, and forms necessary to properly implement, administer, and enforce the provisions of this act.

SECTION 6. This Act shall not apply to development of:

- (a) Public Buildings.
- (b) Places of worship.
- (c) Barns or outbuildings used for agricultural purposes.
- (d) Replacement structures for previously existing structures.
- (e) Additions to a single-family dwelling.
- (f) A structure owned by a non-profit corporation which is a qualified 501(c)(3) corporation under the Internal Revenue Code.
- (g) Permanent residential structures replacing mobile homes where the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, provided the permanent structure is a residence for the owner and occupant of the mobile home and the owner and occupant have resided on the property for a period of not less than three (3) years.
- (h) Buildings moved from one (1) site within the county to another site within the county.
- (i) Any other commercial or residential use.

SECTION 7. For the exercise of the privilege described herein, Cheatham County may impose a tax on new industrial development not to exceed fifty cents (\$0.50) per gross square

foot. The county may develop a tax rate schedule by which industrial uses are classified by type for the purpose of imposition of the tax authorized herein.

SECTION 8. The tax established in this act shall be collected at the time of application for a building permit for industrial development as herein defined by a county official duly authorized by the county executive. If the tax is collected by the county, the county building official or other responsible official shall receive payment in full in cash or other negotiable instrument as specified by resolution of the county and as approved by the county attorney. If the building permit is issued by a city, the city shall before issuance of the building permit or certificate of occupancy, require evidence by a valid certificate executed by the county building inspector that the full amount of the tax due the county has been paid. No building permit for industrial development as herein defined shall be issued in Cheatham County unless the tax has been paid in full to the county or a negotiable instrument approved by the county attorney and payable to the county has been received. The issuance of a building permit by any city official, without a certificate from the county that the tax has been paid shall render the city liable to the county for the sum or sums that would have been collected by the county, had the certificate of tax paid been required by the city.

SECTION 9. All tax funds collected shall be used for the purpose of providing public facilities, specifically to the educational debt services. Such funds shall be directed, only, to future school building programs which are reasonably related to new industrial development, and to the December, 1996, or last educational bond issue, but no prior bond issues. The need for such funds is declared to be reasonably related to new industrial development.

SECTION 10. The authority to impose this privilege tax on new industrial development in Cheatham County is in addition to all other authority to impose taxes, fees, assessments, or other revenue-raising or land development regulatory measures granted either by the private or public acts of the state of Tennessee and the imposition of such tax, in addition to any other authorized tax, fee, assessment or charge, shall not be deemed to constitute double taxation.

SECTION 11. Any person aggrieved by the decision of the county building official or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(a) By payment of the disputed amount to Cheatham County and by notifying the official that the payment is made under protest.

(b) By requesting an appeal of the decision of the official in written form within ten (10) days of the protest and payment. Appeals shall be heard by the Cheatham County Board of Adjustments and Appeals. Hearing shall be scheduled within forty-five (45) days of the written request for appeal.

(c) The board of adjustments and appeals shall render a decision on all hearings within thirty (30) days of the hearing date unless the hearing is continued from time to time by a majority vote of the board for further information.

(d) The board of adjustments and appeals shall act as a quasi-judicial body whose purpose is to determine the intent of the act, its applicability to the appellant, and to rule upon the interpretation of the official. The board shall not be bound by formal rules of evidence applicable to the various courts of the state.

(e) Hearings before the board shall proceed as follows:

(1) The building official shall explain the ruling and the reasons for the ruling.

(2) The appellant shall explain the reasons for protesting the ruling.

(3) The board may request further information from any county official, including, but not limited to, the county executive, county commissioners or committee members, the county attorney, or the county planning staff. The board shall not have the power to issue a subpoena.

(4) The board shall deliberate and render a decision by a majority vote. Decisions will be reduced to writing and copies shall be sent to all parties and shall become a part of the minutes of the board. Decisions of the board of

adjustments and appeals shall be final, except that either the building official, or the person aggrieved may seek review of the board's actions by certiorari and supersedeas to the Chancery Court of Cheatham County, Tennessee, provided an application to the court is made within sixty (60) days of the written decision of the board.

SECTION 12. The provisions of this Act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to Cheatham County. This Act shall be deemed to create an additional and alternative method for Cheatham County to impose and collect taxes for the purpose of providing public facilities made necessary by new industrial development in the county.

SECTION 13. If any provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SECTION 14. This Act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Cheatham County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified to the Secretary of State.

SECTION 15. For the purpose of approving or rejecting the provisions of this Act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes it shall become effective upon being approved as provided in Section 14.